IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.280 OF 1995

Dattatraya Vishnu Kavathe .. Petitioner
Vs.
Ramchandra Dhondiba Manjare & Ors. .. Respondents.

Mr.Dhople Shantaram i/b Mr.R.V.More for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 18TH MARCH, 2005

P.C.:

. Heard Mr.Dhople Shantaram, learned counsel for the petitioner.

2. This petition is directed against the concurrent findings recorded by the courts below in the application Exhibit-5 filed in regular civil suit no.261 of 1992. The application Exhibit-5 was filed by the petitioner-plaintiff seeking temporary injunction against the defendant restraining them from causing obstruction of peaceful possession of the plaintiff in respect to the suit land bearing Gat No.1212 admeasuring 19 gunthas and Gat No.1213 to the extent of 95 Are. The trial Court had initially granted ad-interim injunction, however, the application was ultimately dismissed by the judgment and order dated 28.7.1983. The matter was carried in

appeal bearing Miscellaneous Civil Appeal No.198 of 1993. The appeal also came to be dismissed on 16.11.1994. This court while admitting the writ petition on 23.1.1995 had granted ad-interim relief in terms of prayer clause (c). Liberty was granted to the respondents to apply for vacating the ad-interim relief. In view of the liberty granted, the respondents had filed civil application no.2484 of 1995 for vacating ad-interim relief passed by this court on 23.1.1995. This court disposed of the said civil application vide order dated 30.6.1995, which reads thus:

> "Heard both sides.
>
> This is for vacating the interim order passed by this Court on 23.1.1995 which was passed ex-parte.
>
> The Respondent herein filed the suit praying for permanent injunction restraining the applicants from interfering with his possession of certain lands. He also filed an application Exh.5 praying for interim injunction. Ad-interim injunction came to be granted on 15.6.1992. However after hearing both the sides, the same came to be vacated on 28.7.1993. The Respondent herein filed Misc.Civil Appeal No.198/1993 challenging the

order passed by the trial Court on 28.7.93. There was no interim injunction obtained by the Respondent during that period. The same came to be dismissed on 16.11.94. Thereafter the Respondent filed this Writ Petition and obtained interim order of injunction for the first time on 23.1.1995 ex-parte. The applicants have filed this application on 22.3.1995 for vacating the same. It is clear that there was no interim injunction running against the applicants from 28.7.1993 to 23.1.1995. This position was not brought to the notice of the Court earlier. In view of this it will not be just and proper to continue this order. However, I make it clear that vacation of this order does not mean and have effect to the possession of any party regarding suit lands is disturbed. The party in possession would continue to hold it. Hence prayer (b) granted.

Certified copy expedited".

3. This petition is pending for final hearing for last more than nine years. Keeping that in view and considering the order passed by this court on 30.6.1995, in my opinion, there is no point in

keeping this writ petition pending any more in this court and the ends of justice would be met by the following order:

(a) If the regular civil suit No.261 of 1992 is still pending and not disposed of so far the following observations made in the order dated 30.6.1995 shall remain operative till the disposal of the said suit:

> "However, I make it clear that vacation of this order does not mean and have effect to the possession of any party regarding suit lands is disturbed. The party in possession would continue to hold it. Hence prayer (b) granted".

(b) If the regular civil suit no.261 of 1992 is still pending, the trial Court shall dispose of the same as expeditiously as possible and preferrably within a period of one year from the date of receipt of this order. It is needless to express that the trial Court shall decide the suit on merits in accordance with law and uninfluenced by the observations made by the courts below while disposing of Exhibit-5 application.

. Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)